

AMENDED IN ASSEMBLY JUNE 20, 2006

AMENDED IN SENATE MAY 26, 2006

AMENDED IN SENATE APRIL 18, 2006

AMENDED IN SENATE MARCH 30, 2006

SENATE BILL

No. 1205

Introduced by Senator Escutia

(Coauthors: Assembly Members Goldberg, *Koretz*, Laird, Oropeza,
and Pavley)

January 25, 2006

An act to amend Sections 39674, 42400, 42400.1, 42400.2, 42400.3.5, 42400.7, 42401, 42402, 42402.1, 42402.2, 42402.4, and 42403 of, to add Sections 39604.3, 42409.5, and ~~42415~~ 42402.6 to, and to repeal Section 42400.4 of the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 1205, as amended, Escutia. Air pollution: Children's Breathing Rights Act: penalties.

(1) Existing law vests local and regional authorities, defined as the governing body of any city, county, or air pollution control district or air quality management district with the primary responsibility for control of air pollution from all sources other than vehicular sources. Existing law establishes maximum criminal and civil penalties for any person, as defined, for violations of air pollution laws from nonvehicular sources. Existing law defines a Title V source as a stationary source required by federal law to be included in an operating permit program established pursuant to Title V of the federal Clean Air Act.

This bill would enact the Children's Breathing Rights Act, which would increase the maximum penalties for specified violations of air pollution laws from nonvehicular sources to \$10,000, and to \$50,000 in the case of Title V sources, as provided. The bill would, on and after June 1, 2007, assess an additional civil penalty of not more than \$100,000 per day for each violation committed by a serious violator, as defined, of specified nonvehicular air pollution laws. ~~The bill would require that at least 10% of all penalties and settlements collected by the districts pursuant to violations of specified air pollution laws be deposited into the Children's Breathing Rights Fund, which would be created by the bill, to be used, upon appropriation, for specified purposes relating to children's health. The bill would require the state board to post on its Internet Web site information on air quality violations, as specified. The bill would require the districts to report to the state board enforcement data relating to air quality violations, as specified. The bill would authorize districts to direct a portion of settlement funds to a program of financial assistance established in each district, known as the Children's Breathing Rights Fund. The bill would specify uses for this money.~~

Because this bill would ~~add new crimes~~ impose new duties on local air districts, this bill would create a state-mandated local program.

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known, and may be cited, as
2 the Children's Breathing Rights Act.

3 SEC. 2. (a) The Legislature finds and declares all of the
4 following:

5 (1) Breathing clean and healthy air is a right of all
6 Californians, especially our children, whose health suffers
7 disproportionately when our air is polluted.

8 (2) Reduced lung growth and function, new asthma cases,
9 respiratory complications for asthmatics, and increased school
10 absences from respiratory illnesses are just some of the
11 consequences our children face if we fail to protect that right.

12 (3) The most recent available state and federal data reveal that
13 more than 245 million pounds of industrial air pollution were
14 emitted near California schools in 1995. Statewide, more than 2.8
15 million children were enrolled in schools located near reported
16 air emissions of carcinogens, reproductive toxins, heavy metals,
17 nitrogen oxides, sulfur dioxide, or particulate matter.

18 (4) The state board is currently statutorily required to post, on
19 its Internet Web site, only summary information every two years.
20 Publicly accessible information regarding air pollution is
21 therefore inadequate.

22 (5) If we improve the enforcement of our air quality laws and
23 ensure that penalties are not so low as to be a minor
24 inconvenience to a serious air polluter, our children's right to
25 clean and healthy air can be better protected, as can the right to
26 environmental justice provided in Section 65040.12 of the
27 Government Code, that is, the fair treatment of people of all
28 races, cultures, and income with respect to the enforcement of
29 environmental laws, regulations, and policies. If we improve the
30 enforcement of our air quality laws, we will avoid future
31 economic and social costs of air pollution.

32 (b) It is the intent of the Legislature to increase penalties for
33 serious violators of air pollution laws and to use enhanced
34 penalties to improve air pollution enforcement activities, to
35 create a statewide database that would provide transparency
36 regarding violations, including serious violations, to help fund
37 local children's health initiatives, and to help fund asthma
38 ~~prevention activities~~ *asthma care management and asthma*

1 *prevention activities, and other programs or activities addressing*
2 *health problems related to air pollution in schools and local*
3 *communities.*

4 SEC. 3. Section 39604.3 is added to the Health and Safety
5 Code, to read:

6 39604.3. (a) (1) Notwithstanding Section 39604, the state
7 board shall post on its Internet Web site, at a minimum by
8 January 1 of each year, the same information on air quality
9 violations that the districts provide to the United States
10 Environmental Protection Agency. To protect confidentiality, the
11 state board may require a password for certain areas of this
12 Internet Web site.

13 (2) *The state board shall also provide links to all district*
14 *Internet Web sites for information on other types of violations.*

15 (b) *To enhance data compatibility with other state*
16 *environmental agencies, each district shall submit to the state*
17 *board the information described in subdivision (a), but in a*
18 *format containing all of the following:*

19 (1) *The name and address of the facility and the owner or*
20 *operator of the facility.*

21 (2) *The date the violation began and the number of days the*
22 *violation occurred.*

23 (3) *The method of the discovery of the violation.*

24 (4) *The date the notice of violation was issued.*

25 (5) *The date for initiating legal action and the civil and*
26 *criminal penalties imposed or settlements agreed upon.*

27 (6) *The state or federal law, regulation, or district rule*
28 *violation by section or code number and a brief description.*

29 (7) *The date the facility returned to compliance and paid the*
30 *penalty.*

31 (c) *To ensure that the state is aware of the amount of*
32 *settlement moneys being contributed to the districts' Children's*
33 *Breathing Rights Funds, and the amount of money subsequently*
34 *awarded to particular organizations and entities pursuant to*
35 *Section 42402.6, the districts shall report all of the following*
36 *data to the state board, at the same time that they report the data*
37 *required by subdivision (b):*

38 (1) *The name and address of the entity making the settlement.*

1 (2) *The name and address of the community or county clinic,*
2 *school, organization, asthma coalition, or other entity receiving*
3 *the settlement moneys.*

4 (3) *The amount of money and date of distribution.*

5 (4) *How the money is to be spent.*

6 SEC. 4. Section 39674 of the Health and Safety Code is
7 amended to read:

8 39674. (a) Except as otherwise provided in subdivision (b),
9 any person who violates any rule or regulation, emission
10 limitation, permit condition, order, fee requirement, filing
11 requirement, duty to allow or carry out inspection or monitoring
12 activities, or duty to allow entry for which delegation or approval
13 of implementation and enforcement authority has been obtained
14 pursuant to subdivision (I) of Section 112 of the federal Clean
15 Air Act (42 U.S.C. Sec. 7412(I)) or the regulations adopted
16 pursuant thereto, adopted pursuant to Section 39659 or Article 4
17 (commencing with Section 39665) or which is implemented and
18 enforced as authorized by subdivision (b) of Section 39658 is
19 strictly liable for a civil penalty not to exceed ten thousand
20 dollars (\$10,000) for each day in which the violation occurs.

21 (b) Any person who violates any rule or requirement, emission
22 limitation, permit condition, order, fee requirement, filing
23 requirement, duty to allow or carry out inspection or monitoring
24 activities, or duty to allow entry for which delegation or approval
25 of implementation and enforcement authority has been obtained
26 pursuant to subdivision (I) of Section 112 of the federal Clean
27 Air Act or the regulations adopted pursuant thereto, adopted
28 pursuant to Section 39659 or Article 4 (commencing with
29 Section 39665), or which is implemented and enforced as
30 authorized by subdivision (b) of Section 39658 at a Title V
31 source is strictly liable for a civil penalty not to exceed fifty
32 thousand dollars (\$50,000) for each day in which the violation
33 occurs.

34 (c) Where a civil penalty in excess of ~~one thousand dollars~~
35 ~~(\$1,000)~~ *five thousand dollars (\$5,000)* for each day of violation
36 is sought, there is no liability under subdivision (a) if the person
37 accused of the violation alleges by affirmative defense and
38 establishes that the violation is caused by an act that was not the
39 result of intentional or negligent conduct. In a district in which a
40 Title V permit program has been fully approved, this subdivision

1 shall not apply to a violation of federally enforceable
2 requirements that occurs at a Title V source.

3 SEC. 5. Section 42400 of the Health and Safety Code is
4 amended to read:

5 42400. (a) (1) Except as otherwise provided in paragraph
6 (2), or Section 42400.1, 42400.2, 42400.3, or 42400.3.5, any
7 person who violates this part, or any rule, regulation, permit, or
8 order of the state board or of a district, including a district
9 hearing board, adopted pursuant to Part 1 (commencing with
10 Section 39000) to Part 4 (commencing with Section 41500),
11 inclusive, is guilty of a misdemeanor and is subject to a fine of
12 not more than ten thousand dollars (\$10,000) or imprisonment in
13 the county jail for not more than six months, or both.

14 (2) Notwithstanding paragraph (1) and except where a greater
15 penalty is authorized by law, any person who violates this part, or
16 any rule, regulation, permit, or order of the state board or of a
17 district, including a district hearing board, adopted pursuant to
18 Part 1 (commencing with Section 39000), Part 2 (commencing
19 with Section 39500), Part 3 (commencing with Section 40000),
20 or Part 4 (commencing with Section 41500) at a Title V source is
21 guilty of a misdemeanor and is subject to a fine of not more than
22 fifty thousand dollars (\$50,000) or imprisonment in the county
23 jail for not more than one year, or both.

24 (b) If a violation under subdivision (a) with regard to the
25 failure to operate a vapor recovery system on a gasoline cargo
26 tank is directly caused by the actions of an employee under the
27 supervision of, or of any independent contractor working for, any
28 person subject to this part, the employee or independent
29 contractor, as the case may be, causing the violation is guilty of a
30 misdemeanor and is punishable as provided in subdivision (a).
31 That liability shall not extend to the person employing the
32 employee or retaining the independent contractor, unless that
33 person is separately guilty of an action that violates this part.

34 (c) Except as otherwise provided in paragraph (2) of
35 subdivision (a), any person who owns or operates any source of
36 air contaminants in violation of Section 41700 that diminishes air
37 quality and causes a substantial risk of actual injury, whether the
38 risk of injury is immediate or in the future, is guilty of a
39 misdemeanor and is subject to a fine of not more than

1 twenty-five thousand dollars (\$25,000) or imprisonment in the
2 county jail for not more than nine months or both.

3 (d) Except as provided in paragraph (2) of subdivision (a), any
4 person who owns or operates any source of air contaminants in
5 violation of Section 41700 that causes actual injury, as defined in
6 subdivision (d), to the health or safety of a considerable number
7 of persons or the public is guilty of a misdemeanor and is subject
8 to a fine of not more than fifty thousand dollars (\$50,000) or
9 imprisonment in the county jail for not more than nine months, or
10 both.

11 (e) As used in this section, “actual injury” means any physical
12 injury that, in the opinion of a licensed physician and surgeon,
13 requires medical treatment involving more than a physical
14 examination.

15 (f) Each day during any portion of which a violation of
16 subdivision (a) or (c) occurs is a separate offense.

17 SEC. 6. Section 42400.1 of the Health and Safety Code is
18 amended to read:

19 42400.1. (a) Except as otherwise provided in paragraph (2)
20 of subdivision (a) of Section 42400, any person who negligently
21 emits an air contaminant in violation of this part or any rule,
22 regulation, permit, or order of the state board or of a district
23 pertaining to emission regulations or limitations is guilty of a
24 misdemeanor and is punishable by a fine of not more than
25 twenty-five thousand dollars (\$25,000), or imprisonment in the
26 county jail for not more than nine months, or both.

27 (b) Any person who negligently emits an air contaminant in
28 violation of Section 41700 that causes great bodily injury, as
29 defined by Section 12022.7 of the Penal Code, to, or death of,
30 any person, is guilty of a misdemeanor and is punishable by a
31 fine of not more than one hundred thousand dollars (\$100,000),
32 or imprisonment in the county jail for not more than one year, or
33 both.

34 (c) Each day during any portion of which a violation occurs is
35 a separate offense.

36 SEC. 7. Section 42400.2 of the Health and Safety Code is
37 amended to read:

38 42400.2. (a) Except as otherwise provided in paragraph (2)
39 of subdivision (a) of Section 42400, any person who emits an air
40 contaminant in violation of any provision of this part, or any

1 order, rule, regulation, or permit of the state board or of a district
2 pertaining to emission regulations or limitations, and who knew
3 of the emission and failed to take corrective action within a
4 reasonable period of time under the circumstances, is guilty of a
5 misdemeanor and is subject to a fine of not more than forty
6 thousand dollars (\$40,000), or imprisonment in the county jail for
7 not more than one year, or both.

8 (b) For purposes of this section, “corrective action” means the
9 termination of the emission violation or the grant of a variance
10 from the applicable order, rule, regulation, or permit pursuant to
11 Article 2 (commencing with Section 42350). If a district
12 regulation regarding process upsets or equipment breakdowns
13 would allow continued operation of equipment which is emitting
14 air contaminants in excess of allowable limits, compliance with
15 that regulation is deemed to be corrective action.

16 (c) Any person who owns or operates any source of air
17 contaminants in violation of Section 41700 that causes great
18 bodily injury, as defined by Section 12022.7 of the Penal Code,
19 to, or death of, any person, and who knew of the emission and
20 failed to take corrective action within a reasonable period of time
21 under the circumstances, is guilty of a misdemeanor and is
22 subject to a fine of not more than two hundred fifty thousand
23 dollars (\$250,000), or imprisonment in the county jail for not
24 more than one year, or both.

25 (d) Each day during any portion of which a violation occurs
26 constitutes a separate offense.

27 SEC. 8. Section 42400.3.5 of the Health and Safety Code is
28 amended to read:

29 42400.3.5. (a) Except as otherwise provided in paragraph (2)
30 of subdivision (a) of Section 42400, any person who knowingly
31 violates any rule, regulation, permit, order, fee requirement, or
32 filing requirement of the state board or of a district, including a
33 district hearing board, that is adopted for the control of toxic air
34 contaminants pursuant to Part 1 (commencing with Section
35 39000) to Part 4 (commencing with Section 41500), inclusive,
36 and for which delegation or approval of implementation and
37 enforcement authority has been obtained pursuant to subdivision
38 (I) of Section 112 of the federal Clean Air Act (42 U.S.C. Sec.
39 7412(I)), or the regulations adopted pursuant thereto, is guilty of
40 a misdemeanor and is subject to a fine of not more than ten

1 thousand dollars (\$10,000) or imprisonment in the county jail for
2 not more than six months, or both.

3 (b) Except as otherwise provided in paragraph (2) of
4 subdivision (a) of Section 42400, any person who knowingly
5 makes any false material statement, representation, or
6 certification in any form or in any notice or report required by a
7 rule or regulation adopted or permit issued for the control of
8 toxic air contaminants pursuant to Part 1 (commencing with
9 Section 39000) to Part 4 (commencing with Section 41500),
10 inclusive, and for which delegation or approval of
11 implementation and enforcement authority has been obtained
12 pursuant to subdivision (l) of Section 112 of the federal Clean
13 Air Act or the regulations adopted pursuant thereto, or who
14 knowingly renders inaccurate any monitoring device required by
15 that toxic air contaminant rule, regulation, or permit is subject to
16 a fine of not more than thirty-five thousand dollars (\$35,000) or
17 imprisonment in the county jail for not more than nine months, or
18 both.

19 (c) Except as otherwise provided in paragraph (2) of
20 subdivision (a) of Section 42400, any person who, knowingly
21 and with intent to deceive, falsifies any document required to be
22 kept pursuant to any provision of this part, or any rule,
23 regulation, permit, notice to comply, or order of the state board
24 or of a district, is punishable as provided in subdivision (b).

25 SEC. 9. Section 42400.4 of the Health and Safety Code is
26 repealed.

27 SEC. 10. Section 42400.7 of the Health and Safety Code is
28 amended to read:

29 42400.7. (a) The recovery of civil penalties pursuant to
30 Section 39674, 42401, 42402, 42402.1, 42402.2, or 42402.3
31 precludes prosecution under Section 42400, 42400.1, 42400.2,
32 42400.3, ~~42400.3.5, or 42400.4~~ or 42400.3.5 for the same
33 offense. When a district refers a violation to a prosecuting
34 agency, the filing of a criminal complaint is grounds requiring
35 the dismissal of any civil action brought pursuant to this article
36 for the same offense.

37 (b) If the pending civil action described in subdivision (a)
38 includes a request for injunctive relief, that portion of the civil
39 action shall not be dismissed upon the filing of a criminal
40 complaint for the same offense.

1 SEC. 11. Section 42401 of the Health and Safety Code is
2 amended to read:

3 42401. Except as otherwise provided in subdivision (b) of
4 Section 42402, any person who intentionally or negligently
5 violates any order of abatement issued by a district pursuant to
6 Section 42450, by a hearing board pursuant to Section 42451, or
7 by the state board pursuant to Section 41505, is liable for a civil
8 penalty of not more than twenty-five thousand dollars (\$25,000)
9 for each day in which the violation occurs.

10 SEC. 12. Section 42402 of the Health and Safety Code is
11 amended to read:

12 42402. (a) Except as provided in Sections 42402.1, 42402.2,
13 42402.3, and 42402.4, any person who violates this part, any
14 order issued pursuant to Section 42316, or any rule, regulation,
15 permit, or order of a district, including a district hearing board, or
16 of the state board issued pursuant to Part 1 (commencing with
17 Section 39000) to Part 4 (commencing with Section 41500),
18 inclusive, is strictly liable for a civil penalty of not more than ten
19 thousand dollars (\$10,000).

20 (b) Notwithstanding subdivision (a) and except where a
21 greater penalty is authorized by law, any person who violates this
22 part, any order issued pursuant to Section 42316, or any rule,
23 regulation, permit, or order of a district, including a district
24 hearing board, or of the state board issued pursuant to Part 1
25 (commencing with Section 39000), Part 2 (commencing with
26 Section 39500), Part 3 (commencing with Section 40000), or Part
27 4 (commencing with Section 41500) at a Title V source is strictly
28 liable for a civil penalty in an amount not more than fifty
29 thousand dollars (\$50,000).

30 (c) (1) Except as specified in paragraphs (2) and (3), if a civil
31 penalty in excess of ~~one thousand dollars (\$1,000)~~ *five thousand*
32 *dollars (\$5,000)* for each day in which a violation occurs is
33 sought, there is no liability under subdivision (a) if the person
34 accused of the violation alleges by affirmative defense and
35 establishes that the violation was caused by an act that was not
36 the result of intentional nor negligent conduct.

37 (2) This subdivision does not apply to a violation of federally
38 enforceable requirements that occur at a Title V source in a
39 district in which a Title V permit program has been fully
40 approved.

1 (3) This subdivision does not apply to a person who is
2 determined to have violated an annual facility emissions cap
3 established pursuant to a market-based incentive program
4 adopted by a district pursuant to subdivision (b) of Section
5 39616.

6 ~~(d) Except as provided in subdivision (b), any person who~~
7 ~~owns or operates any source of air contaminants in violation of~~
8 ~~Section 41700 that diminishes air quality and causes a substantial~~
9 ~~risk of actual injury, whether the risk of injury is immediate or in~~
10 ~~the future, is liable for a civil penalty of not more than~~
11 ~~twenty-five thousand dollars (\$25,000).~~

12 *(d) Any person who owns or operates any source of air*
13 *contaminants in violation of Section 41700 is liable for a civil*
14 *penalty of not more than fifteen thousand dollars (\$15,000).*
15 *Where a violation of Section 41700 affects a school, hospital, or*
16 *licensed care facility for children or the elderly, each person,*
17 *entity, or property affected by the discharge in violation of*
18 *Section 41700 is a separate offense. This subdivision shall not*
19 *limit the imposition of any penalty pursuant to any other*
20 *provision of law.*

21 (e) Any person who owns or operates any source of air
22 contaminants in violation of Section 41700 that causes actual
23 injury, as defined in subdivision (d) of Section 42400, to the
24 health and safety of a considerable number of persons or the
25 public, is liable for a civil penalty of not more than fifty thousand
26 dollars (\$50,000).

27 (f) Each day during any portion of which a violation occurs is
28 a separate offense.

29 SEC. 13. Section 42402.1 of the Health and Safety Code is
30 amended to read:

31 42402.1. (a) Except as otherwise provided in subdivision (b)
32 of Section 42402, any person who negligently emits an air
33 contaminant in violation of this part or any rule, regulation,
34 permit, or order of the state board or of a district, including a
35 district hearing board, pertaining to emission regulations or
36 limitations is liable for a civil penalty of not more than
37 twenty-five thousand dollars (\$25,000).

38 (b) Any person who negligently emits an air contaminant in
39 violation of Section 41700 that causes great bodily injury, as
40 defined by Section 12022.7 of the Penal Code, to any person or

1 that causes the death of any person, is liable for a civil penalty of
2 not more than one hundred thousand dollars (\$100,000).

3 (c) Each day during any portion of which a violation occurs is
4 a separate offense.

5 SEC. 14. Section 42402.2 of the Health and Safety Code is
6 amended to read:

7 42402.2. (a) ~~(1)~~ Except as otherwise provided in subdivision
8 (b) of Section 42402, any person who emits an air contaminant in
9 violation of any provision of this part, or any order, rule,
10 regulation, or permit of the state board or of a district, including
11 a district hearing board, pertaining to emission regulations or
12 limitations, and who knew of the emission and failed to take
13 corrective action, as defined in subdivision (b) of Section
14 42400.2, within a reasonable period of time under the
15 circumstances, is liable for a civil penalty of not more than forty
16 thousand dollars (\$40,000).

17 (b) Any person who owns or operates any source of air
18 contaminants in violation of Section 41700 that causes great
19 bodily injury, as defined by Section 12022.7 of the Penal Code,
20 to any person or that causes the death of any person, and who
21 knew of the emission and failed to take corrective action, as
22 defined in subdivision (b) of Section 42400.2, within a
23 reasonable period of time under the circumstances, is liable for a
24 civil penalty not to exceed two hundred fifty thousand dollars
25 (\$250,000).

26 (c) Each day during any portion of which a violation occurs is
27 a separate offense.

28 SEC. 15. Section 42402.4 of the Health and Safety Code is
29 amended to read:

30 42402.4. Except as otherwise provided in subdivision (b) of
31 Section 42402, any person who knowingly and with intent to
32 deceive, falsifies any document required to be kept pursuant to
33 any provision of this part, or any rule, regulation, permit, or order
34 of the state board or of a district, including a district hearing
35 board, is liable for a civil penalty of not more than thirty-five
36 thousand dollars (\$35,000).

37 SEC. 16. Section 42402.6 is added to the Health and Safety
38 Code, to read:

39 42402.6. (a) If a district enters into a settlement agreement,
40 part of that agreement may include directing a portion of the

1 *settlement funds to a program of financial assistance established*
2 *in each district, known as the Children's Breathing Rights Fund.*

3 *(b) Moneys in the districts' Children's Breathing Rights Funds*
4 *shall be allocated and awarded annually to community and*
5 *county clinics, schools, organizations, asthma coalitions, and*
6 *other entities engaged in or promoting asthma care management,*
7 *asthma prevention activities, and lung health, and other*
8 *programs and activities addressing health problems related to*
9 *air pollution in the district. Asthma care management and*
10 *prevention activities may include, but are not be limited to, the*
11 *provision of education and medication to children with asthma*
12 *and their families, training of asthma care providers, and*
13 *training of community health workers for in-home visits.*

14 *(c) Each district shall create and utilize an advisory*
15 *committee, comprised of at least five persons with knowledge of*
16 *asthma care management or prevention and other health*
17 *problems related to air pollution to determine how moneys in the*
18 *fund are to be allocated and awarded. Persons who serve on the*
19 *committee shall receive no compensation for their service.*

20 *(d) No materials or activities produced or funded with*
21 *settlement moneys contributed to a district's Children's*
22 *Breathing Rights Fund shall display the logo or name of the*
23 *entity making the settlement.*

24 ~~SEC. 16.~~

25 *SEC. 17.* Section 42403 of the Health and Safety Code is
26 amended to read:

27 42403. (a) The civil penalties prescribed in Sections 39674,
28 42401, 42402, 42402.1, 42402.2, 42402.3, and 42409.5 shall be
29 assessed and recovered in a civil action brought in the name of
30 the people of the State of California by the Attorney General, by
31 any district attorney, or by the attorney for any district in which
32 the violation occurs in any court of competent jurisdiction.

33 (b) In determining the amount assessed, the court, or in
34 reaching any settlement, the district, shall take into consideration
35 all relevant circumstances, including, but not limited to, the
36 following:

- 37 (1) The extent of harm caused by the violation.
- 38 (2) The nature and persistence of the violation.
- 39 (3) The length of time over which the violation occurs.
- 40 (4) The frequency of past violations.

1 (5) The record of maintenance.

2 (6) The unproven or innovative nature of the control
3 equipment.

4 (7) Any action taken by the defendant, including the nature,
5 extent, and time of response of the cleanup and construction
6 undertaken, to mitigate the violation.

7 (8) The financial burden to the defendant.

8 ~~SEC. 17.~~

9 *SEC. 18.* Section 42409.5 is added to the Health and Safety
10 Code, to read:

11 42409.5. (a) On and after June 1, 2007, any serious violator
12 shall be liable for a civil penalty of not more than one hundred
13 thousand dollars ~~\$(100,000)~~ *(\$100,000)* per day for each
14 violation described by this article, subject to consideration of the
15 criteria set forth in subdivision (b) of Section 42403, in addition
16 to any other penalty prescribed by this article.

17 (b) For the purposes of this section, “serious violator”
18 includes, ~~but is not necessarily limited to,~~ any person who does
19 any of the following:

20 (1) Purposely or knowingly disconnects or disables any
21 monitoring device or method required by an operating permit.

22 (2) Purposely or knowingly makes any false material
23 statement, representation, or certification in any form, notice,
24 statement, or report required in connection with a permit.

25 (3) Commits one or more high priority violations pursuant to
26 the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.). For
27 purposes of this paragraph, “high priority violation” means an act
28 that is a high priority violation under the high priority violation
29 policy of the United States Environmental Protection Agency, as
30 set forth in “THE TIMELY AND APPROPRIATE (T&A)
31 ENFORCEMENT RESPONSE TO HIGH PRIORITY
32 VIOLATIONS (HPVs)” issued in December of 1998, and the
33 EPA Office of Enforcement and Compliance Assurance
34 “WORKBOOK: The Timely and Appropriate (T&A)
35 Enforcement Response to High Priority Violations (HPVs),”
36 issued June 23, 1999.

37 ~~SEC. 18.~~ Section 42415 is added to the Health and Safety
38 Code, to read:

39 42415. At least 10 percent of all penalties and settlements
40 collected by the districts pursuant to violations of this division,

1 after the prosecuting parties have recovered their reasonable
2 attorney fees and other costs, shall be deposited into the
3 Children's Breathing Rights Fund, which is hereby created in the
4 State Treasury. Moneys in the fund shall be available, upon
5 appropriation by the Legislature, for local children's health
6 initiatives in the district where the penalty was assessed to ensure
7 basic health coverage, including asthma services in schools and
8 communities. If there is no local children's health initiative in the
9 district where the penalty was assessed, the allocation shall be
10 made to the California Healthy Kids Insurance Program,
11 established by Senate Bill No. 437 of the 2005-06 Regular
12 Session.

13 ~~SEC. 19. No reimbursement is required by this act pursuant~~
14 ~~to Section 6 of Article XIII B of the California Constitution~~
15 ~~because the only costs that may be incurred by a local agency or~~
16 ~~school district will be incurred because this act creates a new~~
17 ~~crime or infraction, eliminates a crime or infraction, or changes~~
18 ~~the penalty for a crime or infraction, within the meaning of~~
19 ~~Section 17556 of the Government Code, or changes the~~
20 ~~definition of a crime within the meaning of Section 6 of Article~~
21 ~~XIII B of the California Constitution.~~

22 *SEC. 19. If the Commission on State Mandates determines*
23 *that this act contains costs mandated by the state, reimbursement*
24 *to local agencies and school districts for those costs shall be*
25 *made pursuant to Part 7 (commencing with Section 17500) of*
26 *Division 4 of Title 2 of the Government Code.*